

Message Text

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PAGE 01 VIENNA 02432 291642Z
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E.O. 11652: N/A
TAGS: OCON, CGEN
SUBJECT: CONSULAR CONFERENCE IN VIENNA

REF: A) VIENNA 2232; B) STATE 57650

1. IN ADDITION TO TOPICS SET FORTH REFTEL A, WE WOULD ALSO WELCOME DISCUSSION AND DEPARTMENT'S VIEWS AS TO WHAT CONSTITUTES ADEQUATE NOTIFICATION "WITHOUT DELAY" IN TERMS OF VIENNA CONVENTION ON CONSULAR RELATIONS, ARTICLE 36(1)(B), IN ARREST CASES IF AMERICAN CITIZEN REQUESTS CONSULAR OFFICER BE INFORMED. THIS QUESTION SOMETIMES CAUSES US CONCERN HERE AND WE KNOW IT EXISTS ELSEWHERE.

2. NEITHER TREATY OF FRIENDSHIP, COMMERCE AND CONSULAR RIGHTS BETWEEN AUSTRIA AND THE UNITED STATES OF JUNE 19, 1928 TS 838), NOR VIENNA CONVENTION ON CONSULAR RELATIONS OF APRIL 24, 1963 (TIAS 6820) CONTAIN PROVISIONS FOR AUTOMATIC NOTIFICATION OF ARREST OF AN AMERICAN CITIZEN BY AUSTRIAN AUTHORITIES. NEVERTHELESS, LOCAL AUTHORITIES HAVE USUALLY NOTIFIED US OF ARRESTS OF AMERICAN CITIZENS WITH OR WITHOUT LATTER'S EXPRESS REQUEST. THIS IS HOWEVER INFORMAL PROCEDURE AND A PRODUCT OF GOODWILL AND PERSONAL RELATIONSHIPS. IT IS THEREFORE SUBJECT TO CAPRICE OF POLICE OFFICIAL MOST IMMEDIATELY CONCERNED. OWING TO INTERNAL REGULATIONS, LOCAL PRECINCT STATIONS OR RURAL
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POLICE OFFICERS ARE NOT AUTHORIZED TO COMMUNICATE WITH FOREIGN MISSIONS OR CONSULAR OFFICES DIRECTLY, BUT ARE REQUIRED TO REPORT ARRESTS OF FOREIGNERS TO SUPERIOR HEADQUARTERS BY TELEX. THESE HEADQUARTERS THEN REPORT ARREST TO MINISTRY OF INTERIOR, DIRECTOR GENERAL FOR PUBLIC SAFETY, AND LATTER FORWARDS MESSAGE TO EMBASSY CONCERNED, EITHER THROUGH MINISTRY OF FOREIGN AFFAIRS

OR THROUGH A SECURITY POLICE AGENCY. THIS PROCEDURE NORMALLY CAUSES A DELAY OF THREE TO FIVE DAYS OR EVEN LONGER IN NOTIFICATION PROCEDURE EVEN WHEN PRISONER EXPRESSLY REQUESTS POLICE TO NOTIFY HIS EMBASSY OR CONSUL AT TIME OF ARREST.

3. ALTHOUGH WE HAVE MADE KNOWN REPEATEDLY OUR DESIRE TO APPROPRIATE AUSTRIAN OFFICIALS AT ALL TO BE IMMEDIATELY NOTIFIED OF ARRESTS OF AMERICAN CITIZENS LEVELS, GENERAL RESPONSE HAS BEEN THAT NOTIFICATION THROUGH NORMAL AUSTRIAN BUREAUCRATIC CHANNELS, PROTRACTED THOUGH IT MAY BE, IS TO BE CONSIDERED "WITHOUT DELAY" WITHIN MEANING OF VIENNA CONSULAR CONVENTION. WE GRANT THAT THIS MAY MEET REQUIREMENT OF "LAWS AND REGULATIONS OF RECEIVING STATE" (ARTICLE 36(2), BUT IS STILL GIVES US HEARTBURN. ARE WE BEING UNDULY CONCERNED ABOUT QUESTION OF ACCESS? IT SHOULD BE CLEARLY UNDERSTOOD THAT WHAT IS INVOLVED HERE IS STRICTLY DIFFERENCE OF OPINION CONCERNING DEFINITION OF "WITHOUT DELAY" IN GAINING CONSULAR ACCESS AND NOT ANY PROBLEMS OF MISTREATMENT OF AMERICAN PRISONERS OR DEPRIVATION OF THEIR RIGHTS UNDER AUSTRIAN LAWS. AUSTRIAN CITIZENS ARE SIMILARLY SUBJECT TO BEING HELD IN EFFECT INCOMMUNICADO. BUCHANAN

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